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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

DIAMOND SHAMROCK REFINING AND MARKETING COMPANY,

Petitioner,

v.

NUECES COUNTY APPRAISAL DISTRICT AND THE APPRAISAL REVIEW BOARD OF THE NEUCES COUNTY APPRAISAL DISTRICT,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Texas

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE* AMERICAN PETROLEUM INSTITUTE IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITIONER

The American Petroleum Institute ("API") respectfully moves this Court for leave to file a brief *amicus curiae* in support of the petition for a writ of certiorari pursuant to Rule 37.2 of the Supreme Court Rules. Petitioner has consented to the filing of this brief *amicus curiae*, but Respondents have declined to consent.

API seeks leave to file its brief *amicus curiae* because the Texas Supreme Court decision, if left stand-

ing, may have a significant adverse impact on the petroleum industry. If this Court fails to grant certiorari, ports of entry and other state political subdivisions across this country may impose ad valorem property taxes on all crude oil that is temporarily located within their jurisdictions en route to refineries. As a result, members of the petroleum industry will likely experience a dramatic increase in the taxes they must pay. API believes that since the impact on the petroleum industry arising from the decision below may not be presented to the Court in the briefs filed by the respective parties in this case, it is essential that API be granted leave to file its *amicus curiae* brief.

Moreover, in its *amicus curiae* brief, API discusses the importance of this Court granting certiorari in light of the conflict between the Texas Supreme Court's decision in this case and the decision of the United States Court of Appeals for the Fifth Circuit in *Louisiana Land & Exploration Co. v. Pilot Petroleum Corp.*, 900 F.2d 816 (5th Cir. 1990), *cert. denied*, 498 U.S. 897 (1990).

STATEMENT OF INTEREST

The American Petroleum Institute represents the interests of approximately 300 member companies involved in all aspects of the oil and natural gas industry, including exploration, production, transportation, refining and marketing of petroleum products. Like the Petitioner, many API members import crude oil from foreign sources and transport such oil to refineries located across the United States. API members are greatly concerned by the potential

adverse impact to the petroleum industry arising from the Texas Supreme Court decision.

For the reasons stated above, API respectfully requests the Court to grant the motion for leave to file a brief *amicus curiae*.

Respectfully submitted,

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STATEMENT OF INTEREST

The statement of interest is included in the Motion for Leave to File Brief *Amicus Curiae* in Support of Petitioner.

STATEMENT OF THE CASE AND FACTS

Amicus adopts the statement of the case and facts as set forth by Petitioner.

SUMMARY OF ARGUMENT

1. This case warrants review by this Court because the decision below may encourage many ports of en-

try and other state political subdivisions across this country to impose new ad valorem property taxes on shipments of crude oil in transit through their respective jurisdictions; the resulting increase in taxes would have a significant adverse impact on the petroleum industry.

2. If this Court fails to grant certiorari, this issue is likely to be litigated in other state courts by petroleum industry members other than Petitioner, and another court, presented with this same issue, may reach a conclusion contrary to the decision below. Rather than await that inevitable conflict, this Court should grant certiorari in this case.

3. Finally, this case warrants review because the Texas Supreme Court decision in this case conflicts with the decision of the United States Court of Appeals for the Fifth Circuit in *Louisiana Land & Exploration Co. v. Pilot Petroleum Corp.*, 900 F.2d 816 (5th Cir. 1990), *cert. denied*, 498 U.S. 897 (1990).

ARGUMENT

I. If Left Standing, The Decision Below May Have A Significant Adverse Impact On The Petroleum Industry.

In 1992, 2.2 billion barrels of oil were imported into the United States.[1] In 1993, the number of barrels imported in this country increased to 2.4 billion barrels.[2] Members of the domestic petroleum industry,

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[1] American Petroleum Institute, *Basic Petroleum Data Book*, Vol. XIV, No. 2 (1994).

[2] Energy Information Administration, *Petroleum Supply Annual 1993* 56 (1994).

like the Petitioner, typically obtain crude oil from foreign sources, transport the oil to the United States by tankers, and off-load the oil into storage facilities at the various points of entry to await further transportation via pipelines, trucks, rail cars or barges for delivery to the refineries. The crude oil is then processed at the refineries into such products as home heating oil and gasoline. While en route to the refineries, it is common for crude oil shipments to experience temporary delays and stoppages, depending on the availability of transportation. These temporary stoppages are merely incidental to the continuous journey of crude oil from foreign sources to their ultimate destinations, the domestic refineries. In 1992 alone, 614 billion ton-miles of crude oil were transported in this country;[3] of this amount, over 50% was transported via pipelines.[4] In 1993, it is estimated that pipelines again carried over half the crude oil transported in this country.[5]

The decision below addressing the issue of whether ports of entry (and related tax jurisdictions) may impose ad valorem property taxes on goods in transit will likely severely impact the domestic petroleum industry unless reviewed. If the mere passage of oil through a port of entry or a political subdivision constitutes a taxable incidence, as the Texas Supreme Court has held, petroleum industry members may, by

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[3] 7.5 barrels of crude oil approximately equals one metric ton. *Illustrated Petroleum Reference Dictionary*, 225 (Robert D. Langenkamp ed., PennWell Books 1982) (2d ed. 1980).

[4] *Transportation In America* 59 (Eno Transportation Foundation, Inc. 12th ed. 1994).

[5] *Id.*

virtue of the large quantities of oil that are imported and transported each year, experience a dramatic increase in their annual taxes. This country's petroleum industry already bears an overwhelming tax responsibility and can ill-afford a significant increase in taxes.

The potential adverse financial impact on the domestic petroleum industry arising from a wide-spread application of the rationale of the Texas Supreme Court decision justifies that this Court grant certiorari and resolve the issue presented by this case at this time.

II. The Possible Recurrence of the Issue Presented By This Case Justifies This Court's Review.

Given the vast quantities of crude oil imported and transported across this country annually, it is reasonable to expect that, if this Court fails to grant certiorari, ports of entry and other state political subdivisions across this country will use this new source of taxation. As a consequence, the issue presented by this case will be litigated in other state courts by other petroleum industry members. It is likely that another state court, presented with this identical issue, would reach a conclusion that conflicts with the Texas Supreme Court's analysis. Rather than await that inevitable conflict, this Court should grant certiorari and resolve the issue at this time.

III. The Texas Supreme Court Decision Conflicts With The Decision of the Fifth Circuit in *Louisiana Land*.

The Texas Supreme Court decision in this case conflicts with the decision of the United States Court of Appeals for the Fifth Circuit in *Louisiana Land & Exploration Co. v. Pilot Petroleum Corp.*, 900 F.2d

816 (5th Cir. 1990), *cert. denied*, 498 U.S. 897 (1990). In *Louisiana Land*, the state of Alabama assessed an excise tax on the sale of jet aviation fuel oil that had been purchased by Pilot Petroleum Corporation from Louisiana Land & Exploration Company for sale to Canadian buyers. *Id.* at 817. Pilot Petroleum Corporation challenged the Alabama tax in federal district court. *Id.* On appeal, the Fifth Circuit found the Alabama fuel tax to be "levied on the goods themselves while they are in transit" and therefore unconstitutional under the Import-Export Clause, U.S. Const., art. I, § 10, cl. 2. *Id.* at 821.

Like the Alabama excise fuel tax in *Louisiana Land*, the ad valorem property tax assessed by Respondents in this case is a direct tax on goods "in transit." Yet, the Texas Supreme Court gave minimal consideration to the Fifth Circuit's analysis in *Louisiana Land* and upheld the property tax at issue in this case. Given the striking similarity in facts between the two cases, it is important that this Court grant certiorari and resolve the conflict that exists between the Fifth Circuit and the Texas Supreme Court decisions.

CONCLUSION

For the reasons stated above and in the Petition filed by Diamond Shamrock Refining and Marketing Company, the writ of certiorari should be granted.

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